

## DELTA PROTECTION COMMISSION

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May 29, 1998

Lester Snow, Executive Director  
CALFED Bay-Delta Program  
1416 Ninth Street, Suite 1155  
Sacramento, CA 94236-0001

Subject: Comments on the Programmatic Environmental Impact Statement/Environmental Impact Report, March, 1998

Dear Mr. Snow:

I am writing on behalf of the Delta Protection Commission to submit comments on the Programmatic Environmental Impact Statement/Environmental Impact Report (DEIR) for the CALFED program. The Delta Protection Commission is submitting these advisory comments based on the goals of the Delta Protection Act of 1992 and the policies in the Commission's adopted land use plan for the Primary Zone of the Delta.

The Commission's mandate is to protect and enhance the three existing land uses in the Delta: agriculture, wildlife habitat and recreation; to assure orderly, balanced conservation and development of delta land resources; and to improve flood protection. The challenge to CALFED is to work with the Commission, which represents a broad spectrum of Delta interests, to balance the land uses in the Delta--the "three legs of the stool".

While the Commission supports the overall CALFED planning process and its difficult challenge to resolve conflicting issues concerning water and wildlife in the Delta, the Commission is concerned about the proposed impacts to land uses in the Delta Primary Zone. The currently proposed land use changes would have widespread and detrimental socio-economic impacts on the Delta Primary Zone, which would be exacerbated by the proposed changes in water quality in the South Delta.

These impacts appear to be in violation of one of the six CALFED solutions principles which states "No Significant Redirected Impacts: A solution will not solve problems in the Bay-Delta system by redirecting significant negative impacts, when viewed in its entirety, in the Bay-Delta or other regions of California."

## **Impacts to Agricultural Lands**

The CALFED program would have very serious impacts on agricultural land uses in the Delta Primary Zone, and secondary impacts on agriculture-serving business in the Delta region. The Ecosystem Restoration Program Plan (ERPP) proposes to retire from agriculture and restore to habitat between 98,000 and 115,000 acres of land over the next 25 years. About half those lands would be behind levees and about half those lands would be restored to tidal action. As of 1993, there were 491,774 acres in the Delta Primary Zone, of which 378,160 acres were in agricultural use, 57,596 acres in habitat or uncultivated agricultural use (unirrigated grazing), and 51,000 acres were water-covered. For the entire Legal Delta, the area described in the DEIR, the numbers are: 738,493 acres total; 527,309 acres in agriculture; 82,845 acres in habitat or uncultivated agriculture; 61,119 acres of water-covered lands; and 67,219 acres of urban lands.

There are several major areas already owned by public agencies or nonprofit groups, or already planned and designated for restoration to habitat, including Sherman and Twitchell Islands, Prospect Island, Bouldin and Holland Tracts, Stone Lakes Wildlife Refuge, etc, which would result in thousands of acres of agricultural land being converted to habitat behind levees. These projects already in the planning stages appear to meet the goals for habitat enhancement behind levees without the need to acquire additional privately owned lands in the Delta.

**Comment:** The DEIR should review the ability of the ERPP to meet the goals for new and enhanced habitat behind levees through enhancement and management of currently designated lands, and without acquisition of additional privately-owned lands.

The ERPP includes goals for over 60,000 acres of land to be restored to tidal action to provide fish spawning and rearing habitat in the Delta. Reopening areas to tidal action is only one of many actions recommended to lead to recovery of Delta native fishes, as outlined by the U.S. Fish and Wildlife Service in their November 1996 Recovery Plan. Highest priority actions are (Priority One): increased freshwater flows; protection of the freshwater nature of Delta aquatic habitat; reduced entrainment losses at the State and federal water projects; no net loss of shallow water (defined as less than 3 meters) habitat to dredging; and elimination of harvest of green sturgeon and wild runs of chinook salmon. Development of additional habitat and vegetation zones in the Delta are a Priority 2 action in the Recovery Plan.

Restoration of dry land to shallow water habitat should be only one part of an overall strategy to enhance fish species and aquatic habitat in the Delta. Acquisition and restoration should be implemented over time in conjunction with other key actions designed to meet species population goals which can be developed and monitored as part of the ERPP. Thousands of acres of water-covered lands could be managed and/or enhanced to improve aquatic habitat values. Actions could include: placement of fill to create shallow water habitat; placement of root wads to provide hiding and spawning places; and removal of invasive plants.

**Comment:** The DEIR should evaluate an alternative aquatic habitat enhancement program which addresses opportunities to enhance existing water-covered habitat for spawning and rearing habitat for key fish species (Franks Tract; Big Break; Mildred; Little Holland Tract, etc). Sites to be acquired for restoration should be small, isolated areas which would not contribute to a cumulative adverse impact on agricultural land uses in the Delta Primary Zone. In addition, in-channel islands, waterside berms, and engineer-approved trees at the waterside toe of levees would also be suitable sites for habitat enhancement and restoration. Acquisition, restoration, enhancement, and management should be carried out at the same time as other key actions identified by resource management agencies with expertise in fisheries management.

The DEIR indicates that flooding large acres of agricultural land may result in some additional water in the Delta waterways, while warning that "flora that is restored in the Delta will consume much of the water that would have been used by crops". Testimony has been received by CALFED indicating that permanent flooding of Delta islands would result in **additional** water use--approximately two acre feet above that used for agricultural crops--rather than less, due to evaporation and evapo-transpiration. There is no discussion of the amount of water needed for the proposed restoration areas, and there is no discussion of the source of such water.

**Comment:** The DEIR should provide more specific information about the amount of water needed to flood islands proposed for restoration, and possible sources and estimated cost of such water.

The State has adopted as policy the need to protect the Delta waters from intrusion from the salty waters of San Francisco Bay. The program which identified and protects the Eight Western Islands (Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb). The ERPP seeks to restore 10% of the leveed lands in the Delta to tidal action. There is no discussion of possible salinity impacts associated with reopening 10% of the Delta to tidal action, nor any analysis of methods or techniques to carry out such a program in a manner that would protect water quality in the Delta for in-Delta uses and for export purposes.

**Comment:** The DEIR should address the impacts to water quality, particularly possible salinity intrusion, which may result when large areas are restored to tidal action, as proposed in the ERPP.

The DEIR lists mitigation measures proposed to minimize adverse impacts to agricultural lands in the Delta including:

- 1) restore existing, degraded habitat first;
- 2) develop habitat on public land first;
- 3) absent public lands, acquire and restore lands acquired from willing sellers where at least part of the reason to sell is economic hardship (land that floods frequently or levees that are too expensive to maintain);

- 4) for lands for waterside habitat, seek land on islands where the ratio of levee miles to acres farmed is high;
- 5) obtain easements on farmlands which would allow for minor changes in agricultural practices thus increasing the value of crops to wildlife;
- 6) floodplain restoration efforts would include provisions for continued agricultural practices on an annual basis; and
- 7) conversion would occur over an extended time period; the conversion process would include extensive community, landowner, and stakeholder involvement.

**Comment:** In addition to these conditions, which the Delta Protection Commission supports, the ERPP program should include:

- 1) acquire and/or enhance currently flooded lands to create and/or enhance emergent habitat;
- 2) develop and implement individual management plans for private agricultural properties and develop funds to offset costs of voluntary implementation of such plans;
- 3) develop and implement individual management plans for privately-owned lands managed for wildlife habitat, such as duck clubs and upland hunting clubs, and develop funds to offset costs of voluntary implementation of such plans; and
- 4) develop programs to address stressors to avoid duplication of existing regulatory programs and which address the needs of existing land uses.

**Comment:** Acquisition and retirement of additional privately-owned agricultural lands should be conditioned to ensure:

- 1) proposed restoration projects shall not adversely impact Delta water quality, particularly salinity levels; and
- 2) proposed restoration projects shall not adversely impact existing uses on adjoining lands or adjacent islands.

The DEIR does not suggest any mitigation for the permanent loss of prime farmlands, although the California Environmental Quality Act (CEQA) indicates that conversion of prime agricultural land will result in a significant effect on the environment. The DEIR indicates that up to 105,000 acres of prime agricultural land would be permanently lost through implementation of the ERPP.

**Comment:** The DEIR should analyze if there is a need to mitigate the loss of prime agricultural land under CEQA. Possible mitigation could include permanent protection of agricultural lands through conservation easements; these easements could help carry out the goals of the ERPP's wildlife friendly agriculture component, or the watershed management program.

The DEIR indicates there will be adverse economic impacts in the Delta associated with the retirement of agricultural land for habitat conversion. However, the DEIR reaches the conclusion that the economic impacts will not adversely affect the regional economy, apparently bundling the Delta economy into the Sacramento-Stockton region for analysis. The ERPP alone would result in loss of close to half of the agricultural lands in the Delta Primary Zone.

**Comment:** The DEIR should evaluate impacts to the economy of the Legal Delta, including property and sales tax impacts, address primary impacts to landowners, and address secondary impacts to laborers, suppliers, processors, associated support industries, etc., when evaluating the economic impacts.

### **Impacts to Wildlife Habitat:**

The Delta's agricultural lands have long been recognized as key seasonal wildlife habitat for migratory waterfowl. The Central Valley Habitat Joint Venture has been working for the last ten years to protect agricultural lands in the Delta, enhance seasonal habitat values, and enhance year round habitat values. The value of flooded agricultural lands versus tidal marsh is rated by program biologists as three times as valuable, largely based on the high caloric value of the agricultural residue available to the migratory waterfowl.

**Comment:** The DEIR should evaluate the impact to migratory waterfowl of the loss of up to 115,000 acres of agricultural lands to water-covered habitat and managed wetlands.

Agricultural fields and pasture lands are recognized as feeding areas for several important species including the threatened Swainsons Hawk and Greater Sandhill Crane. Minimal description is included regarding these species and their habitat needs.

**Comment:** The DEIR should evaluate the impact to threatened species such as Swainsons Hawk and Greater Sandhill Crane of the loss of up to 115,000 acres of agricultural lands in the Delta to water-covered habitat and managed wetlands.

The ERPP assumes that restoration of several tens of thousands of acres of agricultural lands to water-covered habitat will result in spawning and rearing habitat needed to delist endangered aquatic species. At this time, there is no or minimal data regarding the value of restored habitat for spawning and rearing of key aquatic species in the Delta. The U.S. Fish and Wildlife Service's plan for recovery of native Delta fishes (November 1996) describes a number of factors deemed critical to enhancing these species; very little scientific research has taken place to determine what criteria are key to development of a successful restoration project. No sites have yet been planned and restored. Areas that have been returned to tidal action have resulted from unplanned levee breaks--Big Break, Franks Tract, Little Holland Tract, Mildred Island, etc, with no management of those sites.

**Comment:** The DEIR should more thoroughly describe the “suite” of actions deemed critical to restoration of aquatic species, and likely phasing and partnering of restoration activities.

The DEIR indicates that due to the influence of the State and federal project pumps in the South Delta, restoration of habitat should be focused in the North and East Delta. The DEIR states “habitat restored in the south Delta would have the least value to Delta species. Restored habitat in the central Delta would also be of minimal value...” (P. 7.1-37).

**Comment:** The DEIR should evaluate the value of habitat restored in the Central and South Delta as part of a program to restore general ecosystem health in the Delta, rather than locating all aquatic habitat restoration in the North and East Delta to avoid impacts of the project pumps.

The DEIR states that restoration of large areas to wetland habitat will increase the amount of available mosquito breeding habitat and suggests integrating various mosquito control methods. The DEIR notes that mitigation measures may not be adequate to reduce impacts to less-than-significant levels (page 8.8-13).

**Comment:** The DEIR should ensure that any project which could potentially result in increased mosquito breeding habitat be reviewed by the local mosquito and vector control district, and conform to any site specific conditions or best management practices recommended or required by that district. The issue of funding mosquito control district services should be negotiated prior to constructing habitat projects.

### **Impacts to Recreation:**

The DEIR describes a number of actions which could be implemented to protect habitat and habitat values which would affect recreational boating activities. Actions include: adoption of speed zones; and temporary, season or permanent closure of Delta waterways.

**Comment:** The DEIR should outline the circumstances and legal authorities which would be exercised to implement the controls on boating in the Delta described in the DEIR.

The DEIR states that if recreational facilities are displaced, mitigation should include the relocation of a similar facility in a nearby location.

**Comment:** The DEIR should explain how this program would be exercised, and how suitable locations for replacement facilities would be identified, and approvals obtained.

The DEIR states that the restoration and redesign of existing levees and the design of new levees should accommodate vehicular access and parking for shoreline fishing, boat launching, swimming, hiking, bicycling, and wildlife viewing.

Comment: The DEIR should describe how such sites would be supervised, and how appropriate support facilities such as restrooms and trash receptacles would be provided and maintained. The DEIR should also describe how appropriate sites would be identified to minimize conflicts with agricultural uses and wildlife habitat values.

The DEIR does not address the requirements of the Davis-Dolwig Act of 1961 which specifies that planning for public recreation use is to be part of project formulation for activities in connection with State-sponsored water projects. No such component is included in the description of the CALFED conveyance project elements.

Comment: The DEIR should be amended to include reference to the Davis-Dolwig Act of 1961, and to include a public recreation component for the CALFED program.

**Impacts to Delta Levees:**

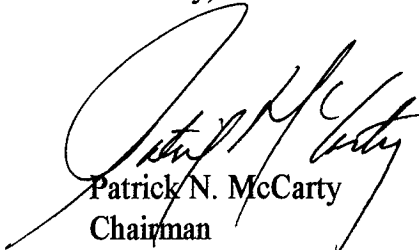
The DEIR describes the proposed improvement to the existing Delta levees--primarily to the non-project levees-- which would bring those levees to a more stable standard, PL-99. PL-99 is an agricultural standard which ensures that levee crowns are one and a half feet above the 100 year flood elevation and include minimum slopes of two to one on the water side and slopes of three to one to five to one on the land side depending on the soil conditions.

Comment: The proposed standard, PL-99, is included as the recommended standard for Delta non-project levees in the Commission's Land Use and Resource Management Plan for the Primary Zone of the Delta.

**Summary:**

The Delta Protection Commission supports the CALFED concept of "getting better together". The Commission wants to continue to participate in the CALFED process, and work with CALFED and its staff to develop a reasonable and effective overall program which will protect and enhance the unique resources of the Primary Zone of the Delta, while moving towards the goals of the CALFED program.

Sincerely,



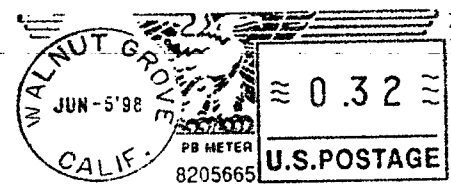
Patrick N. McCarty  
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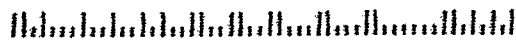
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